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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,938	01/22/2004	Nolan D. Schabacker	1043	5975

7590

09/21/2004

John D. Lister
3841 East Diamond Avenue
Mesa, AZ 85206-1836

EXAMINER

PECHHOLD, ALEXANDRA K

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/762,938

Applicant(s)

SCHABACKER, NOLAN D. 

Examiner

Alexandra K Pechhold

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 and 31-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date filed 1/22/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because of the following informalities: it appears that "of" is missing before "pins" in line 3. Appropriate correction is required.
2. Applicant has NO CLAIM 30 listed, jumping from claim 29 to 31.
3. Certain claims lack letters, like in claim 26 and 33 where a few letters from words were dropped. Appropriate correction required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-4, 10, 11, 18, 20-24, 29, 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCuskey (US 6,709,191).**

Regarding claims 1 and 21, McCuskey discloses a method of forming a tactile walking surface structure as part of the prior art in column 1, lines 14-25 and 28-33. Here, McCuskey discloses using a pattern of raised markers in a predetermined pattern, which is assumed to be any size of area desired, and the prior art method of drilling holes, inserting markers with elongate pins sticking out for the bottom, and using an adhesive for bonding the pin to the holes. McCuskey fails to specifically disclose the

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size of the area, or the exact spacing of holes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the size of the area to be at least 1ft in width by at least 2ft in length, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claims 2, 3, 22, and 23, McCuskey fails to specifically disclose the size of the area, or the exact spacing of holes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the size of the area to be at least 2ft in width by at least 3ft in length, and have holes in a repetitive square pattern as recited in claim 3 with the pins projecting upwardly 0.20 inches from the upper surface of the concrete, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claims 4 and 24, McCuskey disclose a truncated dome shape in column 1, lines 14-25.

Regarding claims 10 and 29, McCuskey discloses in column 1, lines 14-33 the upper end that is circular with a 35 mm diameter, and discloses a pin projecting from the undersurface.

Regarding claims 11 and 31, McCuskey disclose a truncated dome shape in column 1, lines 14-25.

Regarding claim 18, McCuskey discloses drilling in column 1, line 30.

Regarding claim 20, McCuskey fails to specifically disclose an indexing drilling assembly, but does disclose drilling operation in column 1, line 30. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the drilling in McCuskey to be an indexing drilling assembly, since the best and most efficient approach to the drilling procedure can be determined for the particulars of the application.

6. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCuskey (US 6,709,191) as applied to claim 18 above, and further in view of Palazzotto et al (US 5,822,120). McCuskey fails to disclose using a template with a selected hole pattern to establish drilling locations for the holes. Palazzotto teaches using a random pattern of holes punched into paper stock to act a template, then laying the template over an aluminum panel and applying adhesive, forming a discrete pattern of adhesive, then applying the retroreflective elements to the adhesive (Example 8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of McCuskey to include using a template to establish the hole pattern for the markers as taught by Palazzotto in Example 8, since a template provides a structured rigid pattern for the holes.

7. Claims 5-8, 12-15, 25-28, and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCuskey (US 6,709,191) as applied to claims 4, 11, 24, and 31 above, and further in view of Foster et al (US 2,321,476).

Regarding claims 5, 7, 12, 14, 25, 27, 32, and 34, McCuskey fails to disclose that each of the markers has a compressive strength substantially equal to or greater than

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the compressive strength of the slab, and fails to disclose the material of the markers.

Foster teaches markers that are traditionally made of metal and cement (Col 1, lines 44-46). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the material of the markers of McCuskey to be made of metal or cementitious material as taught by Foster, and have each of the markers have a compressive strength substantially equal to or greater than the compressive strength of the slab, since Foster notes in column 1, lines 44-46 that such road markers have traditionally been made of such materials, which are well known as readily available and economical, and a compressive strength equal to or greater than the slab would be desirable to maintain the integrity of the markers throughout their wear.

Regarding claims 6, 8, 13, 15, 26, 28, 33, and 35, McCuskey discloses adhesive in column 1, lines 33-34.

8. Claims 9, 16, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCuskey (US 6,709,191) and Foster et al (US 2,321,476) as applied to claims 8, 15, 35 above, and further in view of Webster (US 1,966, 227).

The combination of McCuskey and Foster fails to disclose a reservoir between each hole and the pin inserted into the hole. Webster illustrates such a reservoir in Fig. 5 between the pins and hole (19) circumference, which is filled with a plastic material (Col 2, lines 100-103). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the structure of McCuskey to include a reservoir between each hole and pin as taught by Webster, since Webster states in

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column 2, lines 100-103 that plastic can be inserted into this space to secure the pin in place in the hole.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (703) 305-0870. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703)308-3870. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.


Thomas B. Will
Supervisory Patent Examiner
Group 3600

AKP
9/16/04